IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 24283 of 2004

Between:

1 Smt.Khadarunnissa Begum, w/o late Anwaruddin,
r/o 24-A, Papasaheb Building, Ashoknagar, Eluru.
2 Md.Liaquath Ali (M.L.Ali), s/o late Habibullah,
A.P.High Court, r/o 304, Ganga Apt. Road No.14,
Himayathnagar, Hyderabad.
3 S.U.Farooq, s/o SAK Basha,
r/o 24-A, Ashoknagar, Eluru.
4 Md.Hidayatullah, s/o late Habibullah,
Ameenapet, Eluru.
5 Md.Yousuf Ali, s/o Dowla,
Ameenpet, Eluru.
6 Md.Farooq, s/o late Anwaruddin,
Bhagyanagar Colony, Mouzamjahi Market,
Hyderabad.
7 Md.Aneesuddin, s/o late Anwaruddin,
Bhagyanagar Colony, Mouzamjahi Market,
Hyderabad.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh, rep., by its Secretary,
Home Department, Secretariat, Hyderabad.
2 The Director General of Police, Government of Andhra Pradesh,
Lakdikapool, Hyderabad.
3 The Deputy Inspector General of Police, Eluru Range, Eluru,

W.G.District.
4 The Superintendent of Police, West Godavari District, Eluru.

5 The Circle inspector of Police, Eluru Town, Eluru.
6 The Station House Officer, Sub-Inspector of Police,
II Town Police Station.
7 The Revenue Inspector, M.R.O., Office, Eluru.
8 Yerramsetti Srinivas, s/o late Y.Ganapathi Rao,
r/o Door No.26-1-19, House of Bandi Dharma Rao,
Venkata Lakshmi Nilayam, Railway Colony, Ameenapet, Eluru,

W.G.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of mandamus declare the action of the respondents 5 and 6 in dispossessing the petitioners from the premises House No.24-A, Papasaheb building, Ashoknagar, Eluru and redelivering the possession to the 8th respondent with a threat of arrest by registering false case F.I.R. 358/04 dated 20-12-2004 as illegal, arbitrary and unsustainable and consequentially direct the respondents to restore the possession of the petitioners property House bearing No.24-A, Papasaheb Building, Ashoknagar, Eluru.

Counsel for the Petitioners:MR.M.P.CHANDRAMOULI

Counsel for the Respondents 1 to 6 No.: GP FOR HOME

The Court at the stage of admission made the following ORDER:

The first petitioner claims to be the owner of the premises bearing house No.24-A, Papasaheb Building, Ashoknagar, Eluru comprising of two portions. According to her, one portion was given on lease to the second petitioner and the other, to the eighth respondent. The petitioners state that the eighth respondent voluntarily vacated the two main rooms leased to him but retained the control over two rooms with asbestos roof.

The petitioners contend that when the eighth respondent, a practising advocate, sought to interfere with their possession over the premises vacated by him, they filed O.S.No.1359 of 2004 in the Court of the I Additional Junior Civil Judge, Eluru on 20.12.2004 and filed an application for temporary injunction. Notice is said to have been ordered in the I.A. It is alleged that when the eighth respondent continued his activities, the petitioners submitted a complaint before the Circle Inspector & S.H.O., II Town Police Station, Eluru, respondents 5 and 6, on 20.12.2004 at about 09.30 a.m. Petitioners state that respondents 5 and 6 initially acted in a receptive manner, but thereafter, at the instance of the eighth respondent, they started ill-treating them. It is further alleged that instead of taking action on their complaint, respondents 5 and 6 registered F.I.R.No.358 of 2004 against the petitioners under Sections 452,427,341,506(2) read with 34 I.P.C. at 06.00 p.m. on that day. It is ultimately stated that respondents 5 and 6 have forcibly dispossessed the petitioners from the premises vacated by the eighth respondent. They seek a writ of *mandamus* declaring the action of respondents 5 and 6 in this regard as illegal, arbitrary and high-handed.

In the counter-affidavit filed by the eighth respondent, the allegations made by the petitioners are denied. He contends that he never vacated the premises and, in fact, he filed O.S.No.768 of 2004 in the Court of Principal Junior Civil Judge, Eluru when he sensed threat and interference by the petitioners.

Sri M.P. Chandramouli, learned counsel for the petitioner, submits that the eighth respondent voluntarily vacated the premises and when the petitioners were about to undertake development of the property, he insisted on payment of huge amounts. He contends that the petitioners submitted a complaint at the earliest point of time and instead of taking action thereon, respondents 5 and 6 supported the eighth respondent. He contends that a mere perusal of the complaint submitted by the eighth respondent discloses that he was not in possession by the time he submitted his complaint on 20.12.2004 and the action taken by respondents 5 and 6 cannot be sustained in law.

Sri C.B. Mohan Reddy, learned counsel for the eighth respondent, on the other hand, submits that there is nothing on record to disclose that the eighth respondent vacated the premises in question. He submits that his client was in possession of the premises and when he was threatened by the petitioners, he filed a suit and obtained an order of injunction. According to him, the recitals in the complaint relate to certain acts and they do not have any bearing on the possession over the premises.

Learned Government Pleader for Home submits that the disputes between the petitioners on the one hand and the eighth respondent on the other have to be resolved in the pending suits and that respondents 5 and 6 cannot take any steps on their own accord.

The petitioners contend that the eighth respondent voluntarily vacated the premises leased to him and thereafter sought to resume the same forcibly. It is their case that at the instance of the eighth respondent, respondents 5 and 6 have dispossessed them from the said premises. In view of serious assertions and denials by the contesting parties, it is difficult for this Court to record any finding as to the possession over the premises. It is not as if there existed any orders by the competent Courts adjudicating the disputes between the parties. The petitioners on the one hand and the eighth respondent on the other have filed separate suits. In O.S.No.1359 of 2004 on the file of the I Additional Junior Civil Judge, Eluru filed by the petitioner, notice is said to have been ordered. This Court is of the view that the question of possession, being most relevant in the application for temporary injunction, can be effectively decided by the said Court. In the absence of any definite evidence, it would be difficult for this Court to record any finding. Further any observations made on the basis of the incomplete record would have its own impact on the pending suits.

Hence, the writ petition is disposed of directing that the Court of the I Additional Junior Civil Judge, Eluru while considering the application for temporary injunction filed by the petitioners in O.S.No.1359 of 2004 shall deal with the question of possession over the suit schedule premises, uninfluenced by any assertions and denials by the parties to this writ petition in relation to the

criminal complaints before the fifth respondent and it shall be open to the parties to place such material as they intend to before the said Court. There shall be no order as to costs.

31.01.2005

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To

1 The Government of Andhra Pradesh, rep., by its Secretary,
Home Department, Secretariat, Hyderabad.
2 The Director General of Police, Government of Andhra Pradesh,
Lakdikapool, Hyderabad.
3 The Deputy Inspector General of Police, Eluru Range, Eluru,

W.G.District.
4 The Superintendent of Police, West Godavari District, Eluru.
5 The Circle inspector of Police, Eluru Town, Eluru.
6 The Station House Officer, Sub-Inspector of Police,
II Town Police Station.

7 The Revenue Inspector, M.R.O., Office, Eluru.
8 Two CCs. to the G.P. for Home, High Court of A.P., Hyderabad

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9 Two C.D. Copies.